MALAYSIAN REPORTS

LY SEE CHOW v. PUBLIC PROSECUTOR

[A.Cr.J. (Sharma J.) September 4, 1970]

[Malacca — Juvenile Appeal No. 13 of 1970]

Children and Young Persons — Child in need of care and protection — Proof required — Whether Juvenile Court can act on confidential letter from police officer — Procedure of Juvenile Court — Juvenile Courts Ordinance, 1947, ss. 4(5), 36 & 37.

This was an appeal against an order made against the appellant under section 37 of the Juvenile Courts Ordinance. It appeared that the learned president of the juvenile court had acted mainly on a confidential letter from a police officer which had asked the president to take action under the Juvenile Courts Ordinance, 1947. No satisfactory evidence was adduced or recorded in the case.

Held, allowing the appeal: the learned president should not have acted on the confidential letter of the police officer. There was in fact no proof in this case that the guardian was unable to control the appellant nor was there any evidence that the court was satisfied that it was expedient to deal with the appellant under the Juvenile Courts Ordinance. In the circumstances the order made against the appellant must be quashed.

JUVENILE APPEAL.

Appellant in person.

Ahmad bin Haji Abdul (Deputy Public Prosecutor) for the respondent.

Sharma J. (delivering oral judgment, in chambers): The appellant in this case was arrested on the 9th March 1970 under section 3(1) of the Emergency (Public Order and Prevention of Crime) Ordinance 1969. I am not concerned in this appeal with his arrest under that Ordinance. What happened after his arrest was that on the 21st day of April 1970 one Gilbert Ang, who, I understand from the record, was at the relevant time an assistant superintendent of police attached to the special branch, wrote a confidential letter addressed to the president of the juvenile court, Malacca. This confidential letter was treated by the court as an application. I might pause here to say that it was highly improper on the part of Gilbert Ang to have addressed this confidential letter to the court and to have asked the court to take action on that confidential letter under the Juvenile Courts Ordinance 1947 as if that letter was a regular application made to that court. He in fact asked the court to send the appellant to an approved school.

The function and duty of the courts is to act with open and fearless impartiality and not in darkness or under any seal of secrecy. Justice has to be administered by the courts according to the law. Its function is not to bend or break the law to suit any confidential request from an officer of the special branch. We are fortunate that in this country the law is supreme and the liberty of the individual is well guarded within the bounds of that law.

Gilbert Ang wanted the court to act under section 36(1)(a) of the Juvenile Courts Ordinance 1947. An application could, of course, have been made under section 36 by a police officer but the only order which the juvenile court could make on that application was to send the child or young person to an institution or home. This obviously the police did not want.

The procedure to be followed in a juvenile court is prescribed under section 4(5) of the Juvenile Courts Ordinance and this procedure is the same as laid down in the Criminal Procedure Code. The Criminal Procedure Code nowhere says that a police officer is empowered to move the court by a mere letter, much less a confidential letter. The only way an application could have been made to the juvenile court was by way of an information. There was thus no proper application before the juvenile court and the learned president acted wrongly in entertaining the confidential letter from Gilbert Ang and in proceeding to adjudicate on it. He seemed to have caught the contagion and marked the whole of the court file relating to this case as "confidential". Most of the matters contained in this letter from Gilbert Ang, if said in any court of criminal justice, would constitute inadmissible evidence and would not be considered by the court.

In any event the matter first came up before the juvenile court on the 2nd May, 1970 when Gilbert Ang appeared in court along with the appellant. Gilbert Ang did not give any evidence but it seems obvious that he made the probation officer put in her report (Ex. P1). I find no scrap of evidence in Ex. P1 which can suggest that the appellant was in need of any care or protection. The application that was being heard on the 2nd May 1970 was an application under section 36(1) of the Juvenile Courts Ordinance which requires the court to be satisfied that the child or young person brought before it was in need of care or protection. Having no evidence of any sort justifying any order for sending the appellant to any institution or home, the only course open to the juvenile court then was to dismiss that "application". The allegations made by Gilbert Ang had not been proved and established. The appellant should in those circumstances have been set at liberty there and then as far as the juvenile court was concerned.

It is a matter of regret that the learned president acted in a manner unbecoming of a court which, regardless of the status, power or personality of the person before it whether as a complainant or a defendant, which regardless of whether such a person is a top ranking police officer or a person powerless and poor, out at the elbows and down at the heels, fearlessly administers justice without any deviation from the law in a manner which not only inspires equality among all but also makes that equality apparent and obvious to each and every one of the community.

The probation officer having put in her report (Ex. P1) the "application" was stood down and adjourned to the 23rd day of May 1970 and the learned president then asked the probation officer to "contact" the adoptive grandmother of the appellant. The record is silent but why that was done seems apparent. On the 21st May, 1970 a letter went to the juvenile court written by this adoptive grandmother informing the court that she was unable to control the appellant and

that he should be sent to an institution or a home. This letter could either be the result of the "contact" by the probation officer or the police. Paragraph 4 of this letter states:

"I have only recently been informed of his association with the secret society of which he has been an active member. I cannot control him and if he is allowed to carry on as he has done, it can be most dangerous to himself, to the family with whom I am living and to the community. I cannot at this stage try to control him because he would not listen to me."

The matter came up for hearing on the 23rd day of May 1970. This time Gilbert Ang was not present in court but the adoptive grandmother was. That day's proceedings do not show what her name is or whether the letter dated the 21st May 1970 was in fact written by her. The appellant was not even identified by her. In fact I do not know who this woman was. On this occasion the probation officer put in another report (Ex. P2). The first report (Ex. P1) could not bring the appellant within the mischief of either section 36 or section 37 of the Juvenile Courts Ordinance. No one had asked the probation officer for a second report. She had already interviewed the adoptive grandmother before submitting the first report. The second report (Ex. P2) is dated the 23rd May 1970, *i.e.* it was prepared on the same day as the "application" was to come up for hearing again. The report (Ex. P2) is an attempt to bring the "application" within section 37 of the Juvenile Courts Ordinance 1947. It may only be a conjecture to say that the adoptive grandmother was made to write that letter dated the 21st May 1970. While it is true that I should not act on mere conjectures yet it is also my duty to see that there is no interference with the liberty of an individual except through due process of law and in strict accordance therewith. In any event the adoptive grandmother, who is also described in the record as the applicant, was never affirmed. Her unaffirmed statement said no more than that she was old and unable to control the appellant. This statement was not evidence. The appellant does not at any stage seem to have been given any opportunity whatsoever either to cross-examine the probation officer or Gilbert Ang or the adoptive grandmother. There is no satisfactory evidence before me that the letter which was sent to the court was in fact sent by the person who appeared before the juvenile court. That letter was neither proved nor produced, nor was the appellant given any opportunity to have a sight of it or a copy thereof. The letter from the so-called adoptive grandmother was again no application to the juvenile court in the proper sense of the word.

Section 37 of the Juvenile Courts Ordinance requires the guardian to prove to the juvenile court that the guardian is unable to control the young person and the court has further to be satisfied that it is expedient to deal with the young person and that the guardian understands the results which would follow from the making of the order and consents to such order being made. There was neither any proof in this case that the guardian was unable to control the appellant nor do we have any evidence that the court was satisfied that it was expedient to deal with the appellant, nor was there any evidence to show that the guardian understood the results of the order which the court was about to make nor that she consented to the said order being made. It was in fact the police who wanted the order.

In this case I find that there has not been any due observance of law and procedure by the learned president. The appeal is allowed. The order of the juvenile court is set aside and the appellant is restored to his liberty. I do not know whether he is still subject to any order under the Emergency (Public Order and Prevention of Crime) Ordinance 1969. Insofar as his liberty has been restrained by any order made under the Juvenile Courts Ordinance he is, of course, at liberty to seek such relief as he may be entitled to under the law either against Gilbert Ang, the Minister or the Government.

Appeal allowed.

AJAIB SINGH v. JEFFREY FERNANDEZ

[O.C.J. (Yong J.) September 22, 1970]

[Kuala Lumpur — Originating Summons No. 92 of 1970]

Practice and Procedure — Application for stay of proceedings pending appeal — Practice on which application may be granted — Federal Court (Civil Appeals) (Transitional) Rules, 1963, r. 14 — Courts of Judicature Act, 1964, s. 73.

Advocates and Solicitors — Disciplinary Committee — Appointment — Application to stay proceedings before the committee — Long delay — Stay refused — Advocates and Solicitors Ordinance, 1947, s. 29.

In this case the respondent applied for an order to stay the proceedings before the disciplinary committee appointed by the learned Chief Justice of Malaya under the Advocates and Solicitors Ordinance, 1947 to enquire into a complaint of unprofessional conduct against the respondent. The evidence before the court disclosed that the learned Chief Justice's order, appointing the committee was made on April 9, 1970 and the respondent did not make his application to set it aside until June 1, 1970. His application was dismissed on June 10, 1970, but he did not appeal against the order of dismissal until July 19, 1970, nor did he make any proper application to stay proceedings earlier than August 17, 1970.

Held: the respondent's application for stay of proceedings had not been promptly made and he had not satisfied the court that serious or irreparable injury would result to him if the stay was not granted, and therefore, the application must be dismissed.

Cases referred to:-

(1) *Serangoon Garden Estate Ltd.* v. *Ang Keng,* [1953] M.L.J. 116.

(2) *Wilson* v. *Church (No. 2),* (1879) 12 Ch. D. 454, C.A.

(3) *Monk* v. *Bartram,* [1891] 1 Q.B. 346, C.A.

(4) *Tuck* v. *Southern Counties Deposit Bank,* (1889) 42 Ch. D. 471, C.A.

(5) *Griffiths* v. *Benn,* (1911) 27 T.L.R. 346, C.A.

(6) *Shaw* v. *Holland,* [1900] 2 Ch. 305, C.A.

(7) *Coleman & Co. Ltd.* v. *Stephen Smith & Co. Ltd.,* [1911] 2 Ch. 572, C.A.

(8) *Nawab S.N. Ally Khan* v. *Rajah O. Khan,* (1865) L.R. 1 P.C. 8 at pp. 11 & 12.